IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/08/2002

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.33949 of 2002

N.D.Gupta
Hotel Picnic
rep. by his Power of Attorney Agent
N.Devendra Kumar Gupta
Door No.14 (Old No.1132)
E.V.R. Salai, Chennai-3. .. Petitioner

-Vs-

Corporation of Chennai
rep. by its Commissioner
Ripon Buildings
Chennai-3. .. Respondents

Petition under Article 226 of the Constitution of India for issue of a writ of Certiorari as stated therein.

For petitioner : Mrs.Hemalatha

For respondent : Mrs.P.Bhagiyalakshmi

:ORDER

According to the petitioner, he being the owner of the building premises No.14, (Old No.1132), E.V.R. Salai, Chennai-3, had erected a Base Trans Receiver Station Tower on the roof of the said building pursuant to an agreement entered into by him with Tata Tele Service Ltd. Objecting the same, the respondent, by their letter dated 16.8.2002, which is impugned in the above writ petition, called upon the petitioner to remove the said Base Trans Receiver Station Tower within seven days from the date of receipt of the said notice, stating that the same had been erected at the premises bearing No.1132, E.V.R. Salai, Chennai-3 without obtaining prior permission either from the Corporation of Chennai or from the Chennai Metropolitan Development Authority. Hence, the petitioner seeks the issue of a writ of Certiorari calling for the records of the proceedings in notice Zone-III/Lr.No.517/ dated 16.8.2002 on the file of the respondent.

2.1. Mrs.Hemalatha, learned counsel for the petitioner, contends that in the absence of any specific provision under the Madras City Municipal Corporation Act to apply for permission to erect the Base Trans Receiver

Station Tower, the respondent cannot compel the petitioner to seek such permission, which is not warranted under the provisions of the Madras City Municipal Corporation Act, nor to call upon the petitioner to remove the said tower within seven days from the date of receipt of the said notice. Hence, the learned counsel for the petitioner contends that the impugned notice is totally without jurisdiction and is liable to be struck down for arbitrary exercise of power.

2.2. Mrs.Hemalatha, learned counsel for the petitioner, further contends that the petitioner had erected the said tower only on the top floor of the petition premises, and therefore, the petitioner has not encroached into the lands of the respondent-Corporation.

3. Per contra, Mrs.P.Bhagiyalakshmi, learned counsel for the respondent, placing reliance on Sections 258 and 378 of the Madras City Municipal Corporation Act, contends that the respondent is empowered to call upon the petitioner to remove the said tower, as called for.

4. I have given a careful consideration to the submissions of both sides.

5. In this regard, I am obliged to extract Sections 258 and 378 of the Madras City Municipal Corporation Act:
Section 258:

Precautions in case of dangerous structures.--

(1) If any structure be deemed by the commissioner to be in a ruinous state or dangerous to passers by or to the occupiers of neighbouring structures, the commissioner may by notice require the owner or occupier to fence off, take down, secure or repair such structure so as to prevent any danger therefrom.

(2) If immediate action is necessary the commissioner may himself before giving such notice or before the period of notice expires fence off, take down, secure or repair such structure or fence off a part of any street or take such temporary measures as he thinks fit to prevent danger and the cost of doing so shall be recoverable from the owner or occupier in the manner provided in section 387.

(3) If in the commissioner’s opinion, the said structure is imminently dangerous to the inmate thereof, the commissioner shall order the immediate evacuation thereof and any person disobeying may be removed by any police officer.

Section 378:

Power of entry to inspect, survey or execute the work.-- The commissioner or any person authorized by him in this behalf may enter into or on any building or land with or without assistants or workmen, in order to make any inquiry, inspection, test, examination, survey, measurement or valuation, or for the purpose of lawfully placing or removing meters, instruments, pipes or

apparatus, or to execute any other work which is authorised by the provisions of this Act or of any rule, by-law, regulation or order made under it or which it is necessary for any of the purpose of this Act or in pursuance of any of the said provisions, to make or execute;

Provided that--

(a) except when it is in this Act otherwise expressly provided, no such entry shall be made between sunset and sunrise;

(b) except when it is in this Act otherwise expressly provided no dwelling house and no part of a public building or hut which is used as a dwelling place, shall be so entered without the consent of the occupier thereof, unless the said occupier has received at least twentyfour hours' previous notice of the intention to make such entry;

(c) sufficient notice shall be in every case given even when any premises may otherwise be entered without notice, to enable the inmates of any apartment appropriated to females to withdraw to some part of the premises where their privacy may be preserved;

(d) due regard shall be paid, so far as may be compatible with the exigencies of the purpose of the entry, to the social and religious usages of the occupants of the premises. "

6. A plain reading of Section 258 of the Madras City Municipal Corporation Act makes it clear that if the Commissioner is of the opinion that any structure is dangerous to the passers-by or to the occupiers of the neighbouring structures, he can, by notice, require the owner or occupier, to remove the said structure. Section 378 of the Madras City Municipal Corporation Act, as rightly pointed out by the learned counsel for the respondent, empowers the respondent to enter into any building or land in order to make any inquiry or inspection and also to remove the meters, instruments, pipes or apparatus that are necessary, for any of the purposes of the Act. If Sections 258 and 3 78 of the Madras City Municipal Corporation Act are read together, it is clear that the respondent is empowered to take appropriate preventive measures as against the dangerous structures. When once the respondent-Commissioner is empowered to take such preventive measures under Section 258 of the Madras City Municipal Corporation Act, the respondent, by exercising the power under Section 378 of the Madras City Municipal Corporation Act, is empowered to take necessary action to execute such preventive measures even without any further notice to the petitioner, before entering into the premises or building, as otherwise, the preventive measures intended to be taken under Section 258 of the Madras City Municipal Corporation Act cannot be executed, as a result of which, the powers conferred on the respondent under Sections 258 and 378 of the Madras City Municipal Corporation Act to take appropriate preventive measures as against any danger would get strangulated, and consequently, the legislative intention, conferring the powers on the respondent to take necessary preventive measures under Sections 258 and 378 of the Madras City Municipal Corporation Act, would miserably be defeated.

7. In the instant case, even though no opportunity is contemplated under Section 378 of the Madras City Municipal Corporation Act to take necessary action to execute the preventive measures as per Section 258 of the Madras City Municipal Corporation Act, the respondent had, in fact, given seven days' time to the petitioner to remove the Base Trans Receiver Station Tower. Hence, unable to appreciate the contentions of the learned counsel for the petitioner that the respondent does not have any jurisdiction to pass the impugned order; that the respondent has acted arbitrarily in passing the impugned order, and that the impugned proceedings is vitiated for violation of the principles of natural justice, I am inclined to dismiss the above writ petition; however, permitting the writ petitioner to approach the respondent within 15 days from the date of receipt of a copy of this order seeking appropriate permission and satisfying the respondent or any other Competent authority with regard to the safety measures provided by the petitioner for erecting the Base Trans Receiver Station Tower. On such representation, the respondent shall pass appropriate orders on merits within thirty days from the date of receipt of such representation, and till then, the respondent shall not remove the Base Trans Receiver Station Tower.

The writ petition is disposed of accordingly. No costs.
Consequently, W.P.M.P.No.50190 of 2002 is closed.

P.D.DINAKARAN,J.

Index: Yes
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